

## **STIPULATIONS**

### **Stipulation I. Definitions**

The definitions found at 36 CFR § 800.16 apply throughout this Agreement except where another definition is provided in Attachment E.

### **Stipulation II. Standards**

1. Identification and evaluation studies and treatment measures required under the terms of this Agreement will be carried out by or performed under the direct on-site supervision of a professional(s) who meets, at a minimum, the Secretary of the Interior's Historic Preservation Professional Qualification Standards (48 *Federal Register* 44716, September 29, 1983).
2. In addition, on all state land in New Mexico, all activities and documentation concerning cultural resources shall be carried out under the appropriate permit and by or under the direct supervision of individuals who are listed on the SHPO Directory of Qualified Supervisory Personnel in the appropriate discipline.
3. In developing scopes of work for identification and evaluation, studies, and treatment measures required under the terms of this Agreement, APS and PNM will take into account the regulations and guidelines listed in Attachment F, as applicable. OSMRE, BIA, and appropriate consulting parties (as defined in Attachment E) based on their jurisdiction will review any scopes of work developed by APS and/or PNM for the identification, evaluation, study, and treatment of historic properties.

### **Stipulation III. Confidentiality**

The distribution of sensitive information about the locations and nature of inventoried historic properties and properties of religious and cultural significance to Indian tribes, including information provided by Indian tribes to assist in the identification of such properties, shall be limited as provided for by Section 304 of NHPA (16 USC 470w3), Section 9 of the ARPA (16 USC 470hh) and its implementing regulations (43 CFR § 7.18), Navajo Nation Cultural Resources Protection Act (CRPA), the Navajo Nation Privacy Act at 2 Navajo Nation Code (NNC) Section 85, and SMCRA (Public Law 95-87), as applicable, in addition to other applicable laws. Pursuant to this stipulation, the Consulting Parties agree to appropriately safeguard and control the distribution of any confidential information they may receive as a result of their participation in this Agreement. Such safeguarded information is exempt from disclosure under the Freedom of Information Act (5 USC 552).

## **Stipulation IV. Responsibilities of Federal Agencies with Land Management and Other Permitting Authorities**

1. OSMRE will comply with and ensure the requirements of Section 106 and its implementing regulations (36 CFR Part 800) are met for the completion of the Section 106 activities undertaken prior to the finalization of the Agreement. On the effective date of this agreement, established in Stipulation XV, the BIA Navajo Regional Office will assume lead responsibility for the performance of the Agreement over the life of the undertaking. OSMRE will remain a Signatory to the Agreement.
2. Consultation for this Project will be coordinated through OSMRE until BIA assumes this responsibility.

## **Stipulation V. General Consultation Process for FCPP Site and Transmission Lines**

### **A. Consultation**

OSMRE is providing the Consulting Parties with an opportunity to provide their views on the identification and evaluation of historic properties as defined in 36 CFR § 800.16(1), including properties of religious and cultural significance to Indian tribes, and the treatment of affected historic properties, in connection with the FCPP Lease Amendment/Plant Site ROW Renewals/and Transmission Line ROW Renewals.

### **B. Identification and Evaluation of Historic Properties Conducted to Date**

1. APS and PNM, through qualified outside cultural resources consultants, have conducted extensive inventory work for the identification of cultural resources within the APE, including archaeological, architectural/engineering, and ethnographic investigations and surveys, as of the date of this Agreement. This work was reviewed by or completed under the direction of OSMRE, in consultation with the Consulting Parties.
2. OSMRE, in consultation with the Consulting Parties, has made determinations of eligibility for listing on the NRHP for sites that were identified through the inventory work undertaken to identify cultural resources. The determinations of eligibility made to date are summarized in Attachment C to this Agreement.
3. OSMRE, in consultation with the Consulting Parties, has assessed the potential effects of the Project in accordance with 36 CFR § 800.4(d) and, where historic properties may be affected, has applied the criteria of adverse effect (as outlined in 36 CFR § 800.5) to NRHP-listed or NRHP-eligible properties located within the APE to assess whether the properties may be

adversely affected by the Undertaking consistent with the process outlined in the stipulations below.

### **C. Ongoing Identification and Evaluation of Historic Properties**

The Consulting Parties agree that additional determinations of eligibility or effects determinations are ongoing for those resources for which OSMRE is finalizing determinations and/or that are part of current inventories listed in Attachment G to this Agreement. These additional determinations are listed as “pending” in Attachment C and will be completed as necessary prior to land-disturbing activities in those areas. The determinations will be included in the summary matrix provided in Stipulation XII. The protocols for ongoing identification and evaluation of historic properties are provided for the Navajo Nation in Stipulation VI, the Hopi Indian Reservation in Stipulation VII, and federal, state, private, and Zia Pueblo lands in Stipulation VIII.

### **D. Treatment of Historic Properties and Resolution of Adverse Effects**

1. Whenever feasible and practicable, avoidance of adverse effects to historic properties will be the preferred treatment. Cultural resources that are unevaluated will be treated as eligible for the NRHP and will be avoided, where practicable. Any resources that cannot be avoided will be subject to the provisions of Stipulation V(E) below. The BIA will provide information regarding development of measures to reduce or mitigate adverse effects on historic properties to the Consulting Parties as outlined in Stipulations VI, VII, and VIII.
2. When historic properties are identified in the APE on Navajo Nation lands and allotments owned by individual Navajo members, the BIA will apply the criteria of adverse effect in accordance with 36 CFR § 800.5(a) and consult with the NNTHPO consistent with the protocols established in Stipulation VI.
3. When historic properties are identified in the APE on Hopi Tribe lands, the BIA will apply the criteria of adverse effect in accordance with 36 CFR § 800.5(a) and consult with the HCPO and Arizona SHPO consistent with the protocols established in Stipulation VII.
4. When historic properties are identified in the APE on Zia Pueblo lands, the BIA will apply the criteria of adverse effect in accordance with 36 CFR § 800.5(a) and consult with the Zia Pueblo and New Mexico SHPO consistent with the protocols established in Stipulation VIII.
5. When historic properties are identified in the APE on federal, State Trust, or private lands, the BIA will apply the criteria of adverse effect in accordance with 36 CFR § 800.5(a) and consult with the applicable federal land manager

(BLM or NPS) and New Mexico SHPO consistent with the protocols established in Stipulation VIII.

6. The New Mexico SHPO will be consulted when determining effects for any properties within the State of New Mexico excluding Navajo Nation lands and allotted lands owned by individual Navajo members.

#### **E. Historic Properties Treatment Plan(s)**

Historic Properties Treatment Plan(s) will be developed, consistent with Stipulations VI, VII, and VIII, to set forth the appropriate process for treatment of historic properties that may be adversely affected by activities covered by this Agreement within the APE, with specific consideration for both the type of historic property and the relevant jurisdiction. The nature of the treatment may vary for the various types of affected historic properties, and separate Historic Properties Treatment Plans may be developed for different portions of the APE or for different types of historic properties. Emergencies will be handled as set forth in Stipulations VI, VII, and VIII.

Historic Properties Treatment Plan(s) shall:

1. Take into account any applicable federal, tribal, and/or state standards for the treatment of historic properties;
2. Describe the properties to be affected by the Undertaking and the nature of those effects;
3. Identify the significant values of the properties within relevant historic contexts and describe how those values would be affected;
4. Specify any measures to avoid, reduce, or mitigate adverse effects on those significant values; and
5. List methods and procedures for addressing any human remains and cultural objects, consistent with Stipulation X and Attachment H.

The Historic Properties Treatment Plan(s) shall include the following topics for the treatment of adverse effects to historic properties:

1. A summary of previous research and findings;
2. A description of the historic property and its significance in relation to the NRHP;
3. Short-term and long-term strategies for the protection of the historic property that are appropriate to the resource type;
4. Mitigation measures based on resource type, including but not limited to data recovery, interpretive materials, Historic American Building Survey/Historic American Engineering Record (HABS/HAER) or agreed-upon equivalent, relocation, and/or consideration of loss of use or access;

5. Schedule to complete mitigation; and
6. Strategies for distributing and/or archiving collected information, as appropriate, consistent with curation procedures in Stipulation XI.
7. Schedule for completion of reports.

Potential adverse effects on historic properties include (33 CFR § 800.5(a)(2)):

- Physical destruction of or damage to all or part of the property;
- Removal of the property from its historical location;
- Change of character within the property's setting;
- Introduction of visual, atmospheric, or audible elements that diminish integrity; or
- Neglect of a property that causes its deterioration.

The Historic Properties Treatment Plan(s) will be developed, reviewed, and finalized consistent with the processes outlined in Stipulations VI, VII, and VIII.

## **Stipulation VI. Navajo Protocols for the APE on Navajo Lands and Allotments Owned by Individual Navajo Members**

### **A. Coordination with the BIA and Navajo Nation THPO**

The BIA Navajo Regional Office and the Navajo Nation have entered into a contract pursuant to the Indian Self-determination and Education Act (Public Law 93-638, as amended) under which the Navajo Nation Historic Preservation Department (HPD) performs selected historic preservation functions for the BIA. Pursuant to that contract, the NNTHPO makes recommendations to the BIA regarding determinations of eligibility and determinations of effects and any necessary measures that may be needed to avoid, mitigate, or minimize effects of an undertaking on historic properties within the Navajo Indian Reservation to satisfy historic preservation responsibilities and to facilitate the BIA's compliance with its Section 106 responsibilities.

The NNTHPO will oversee the identification by the Proponent or its contractor and complete evaluations of historic properties within APEs under the jurisdiction of the Navajo Nation and on allotments owned by individual Navajo members, and make recommendations to the BIA on the assessment of effects and resolution of any adverse effects to those historic properties (including appropriate treatment measures) consistent with the terms of this Agreement and in accordance with Navajo Nation policies, procedures, and guidelines for the preservation and protection of cultural resources; traditional cultural properties (TCPs); cemeteries, gravesites, and human remains; and historic, modern, and contemporary abandoned sites, as appropriate.

The BIA will review the information provided by the NNTHPO, consult with the NNTHPO under Section 106, and make final determinations regarding the identification and evaluation of historic properties and resolution of adverse effects.

## **B. Operation and Maintenance**

### ***1. Procedures that have been Determined not to Affect Historic Properties***

The Consulting Parties agree that most activities related to operation and maintenance of the FCPP, ancillary facilities, and both APS's and PNM's Transmission Lines are not likely to affect historic properties. In general, these activities occur largely on the surface in areas that are already disturbed, do not introduce new structural or visual elements, and require only nominal ground disturbance or alterations to existing structures. Therefore, the Consulting Parties agree that the following Project operations and maintenance activities will not affect historic properties and are exempt from further review/consultation:

#### **a) Aerial Maintenance and Non-Earth-Disturbing Operation and Maintenance Activities**

The Consulting Parties agree that routine aerial maintenance and non-earth-disturbing activities will not affect historic properties. When the routine maintenance consists solely of aerial maintenance or non-earth-disturbing activities, the activity does not require prior notification, review, assessments, or consultation with the NNTHPO or BIA, and no notice will be given. Additionally, no review by the Project Proponents will be required for these activities.

Examples include but are not limited to:

- Maintenance, retrofit, or replacement of above-ground electric Transmission Line structure components including insulators, hardware, cross-braces, cross-members, static cable lines, or switches, and conductors;
- Filling voids or cavities in the wood of utility poles;
- Repair, replacement, or installation of transmission pole numbers;
- Repair, replacement, or installation of pole-mounted components such as insulators, conductors, cross arms, bracing, and associated hardware;
- Transmission and distribution electric line patrols;
- Remote or manual electrical switching work, including turning electric services on or off;
- Electric line spotting;
- Vegetation management within the ROW using means that do not cause ground disturbance, including crews with chainsaws and the application of

approved herbicides by backpack-mounted sprayers or quad-mounted sprayer, which shall occur during dry conditions when through historic properties;

- Annual maintenance inspection with truck, maintenance with bucket truck, and access to ROW by dirt access road for 69-kV Transmission Line, which shall occur during dry conditions when through historic properties; and/or
- Biannual inspection and as-needed paving repairs and replacement of paving, chip sealing, relining, and Botts' dots replacements for roads.

b) Earth-Disturbing Activities in Areas of Previous Disturbance that have been Surveyed

The Consulting Parties agree that when the routine maintenance consists solely of earth-disturbing activities in areas of previous disturbance that have been surveyed, the activity does not require prior notification, review, assessments, or consultation with NNTHPO or the BIA, and no notice will be given. Additionally, no review by the Project Proponent will be required for these activities. However, if during the course of preparing for the work activity it is discovered that a known historic property exists within 50 feet of the activity, procedures for areas previously surveyed and cultural resources within 50 feet of the activity described in Stipulation VI (B)(2)(a)(ii) will be followed. If there are no known historic properties within 50 feet of the activity, no further review is required for these activities.

Examples of earth-disturbing activities in areas of previous disturbance include but are not limited to:

- Anchor repair and maintenance (involves digging 1 to 3 feet in diameter and up to 1 to 2 feet in depth around an existing anchor to remove wind-blown deposits and expose the anchor rod and buried guy wires);
- Road blading on existing, previously bladed access roads;
- Erosion control work to protect the ROW from erosion in areas of previous disturbance;
- Excavations to repair or replace ground wires;
- Excavations immediately around the base of transmission poles;
- Re-grading previously established, mechanically leveled pads around transmission structures to permit safe equipment set-up;
- Work within existing fenced/walled perimeters of electric substations or switching stations;

- Remedial treatment of poles (involves disturbing approximately 1 to 2 feet in diameter and up to 3 feet in depth around the base of an existing pole to examine pole condition and possibly apply a treatment);
- Maintenance, repair, replacement, and installation of poles;
- Maintenance, repair, installation, or replacement of certain ancillary facilities including, but not limited to, gates, fences, and signs;
- Repair of existing access roads that do not traverse historic properties using in-kind materials with all work conducted within the existing footprint of the road;
- Ground patrols within the ROW with all-terrain vehicles (ATVs), provided no new trails or roadways are created;
- Application of approved herbicides by ATV-mounted sprayers on existing trails or roadways;
- Annual inspection of pipeline, concrete vaults and works, excavation of water course at end of piping to Morgan Lake, and repairs of joint to joint and pipe wall erosion.

## ***2. Procedures for which Additional Evaluation is Required***

For activities that may affect historic properties, the Project Proponent will first conduct the following internal review process, as appropriate to the activity, and in conformance with applicable standards in Stipulation II:

- Determine if the work is within the Project APE;
- If the work is within the Project APE, review existing information on historic properties (including historic properties identified in Attachment C);
- Assess the potential existence of historic properties by reviewing existing field survey and other research; and
- Determine the degree of existing disturbance by performing a field inspection, as appropriate.

### **a) Earth-Disturbing Activities in Non-Disturbed Areas**

The Consulting Parties agree that when routine maintenance activities result in earth-disturbing activities in areas that may not have been previously disturbed, the activity is subject to the following additional processes.

#### ***(i) Area Previously Surveyed and No Cultural Resources***

If the area has been previously surveyed and no cultural resources were identified, the Project Proponent will proceed with the routine maintenance. No notification



or approval will be required before work begins. The Project Proponent will maintain records of activities that proceed under these circumstances for a period of six (6) years. During that time, records will be made available to the NNTHPO and the BIA.

*(ii) Area Previously Surveyed and Cultural Resources Identified within 50 feet of the Activity*

If the area has been previously surveyed and cultural resources were identified within 50 feet of the activity, a permitted contractor will evaluate the anticipated effect of the routine maintenance activity on the known resource prior to commencement of the activity.

**No Effect.** If the results of the internal evaluation process indicate that any identified cultural resources can and will be avoided, the Project Proponent will submit a Maintenance Evaluation Report via email or as hard copy within ten (10) calendar days of conducting the review to the NNTHPO and the BIA. This report will confirm that the resources can and will be avoided and the Project Proponent may proceed with the maintenance. No response or approval will be required before work begins.

**Adverse Effects.** If the results of the internal evaluation process indicate that cultural resources that have been determined to be NRHP-eligible will not be avoided and will be impacted, the BIA, in consultation with the NNTHPO, shall ensure the Project Proponents develop a Historic Properties Treatment Plan(s) to resolve the adverse effects of the activity. The Project Proponent will submit the Historic Properties Treatment Plan(s) via email or as hard copy to the NNTHPO and the BIA. The NNTHPO and BIA will review the Historic Properties Treatment Plan(s) and provide comments within thirty (30) calendar days. Project Proponents will address any comments provided by the BIA or NNTHPO in preparing the final Historic Properties Treatment Plan(s). If no response from the NNTHPO or BIA is received by the Project Proponent within thirty (30) calendar days, the Project Proponent must continue to contact the NNTHPO and the BIA in order to obtain an ARPA permit, as applicable.

The Project Proponent will send a copy of the final Historic Properties Treatment Plan(s) to NNTHPO and the BIA. The records documenting the internal evaluation process will be provided to the NNTHPO and the BIA by the Project Proponent within thirty (30) calendar days of their receipt.

*(iii) Area has not been Previously Surveyed*

A permitted contractor will conduct a survey of the area by systematically walking over the ground surface, including those areas listed in Attachment G of this Agreement, and in any areas later added to the APE in the event of future potential Project modifications including new access routes into the ROW after issuance of any ROD, provided they follow the NNTHPO permitting process, as applicable. This survey is designed to gather information about potential cultural resources prior to the commencement of the maintenance activity and will determine whether cultural resources are likely to be present. The following procedures will be implemented depending on the findings of the cultural resources survey.

**Negative Survey.** If the survey results indicate no cultural resources are present, the Project Proponent will submit a negative survey report via email or as hard copy within ten (10) calendar days of conducting the survey to the NNTHPO and BIA, and may proceed with the activity. No response or approval from the NNTHPO and BIA will be required before work begins.

**Positive Survey.** If cultural resources sites are identified during the survey, they will be recorded on applicable forms. The Project Proponent will submit a written report via email or as hard copy following applicable guidelines to the NNTHPO and BIA. The NNTHPO will review the report and provide a recommendation to the BIA on the NRHP eligibility of any newly recorded cultural resources in the APE in accordance with 36 CFR § 800.4(c), the potential effects of the Project in accordance with 36 CFR § 800.4(d), if historic properties may be affected, and the determination of any impacts of the proposed activity (as outlined in 36 CFR § 800.5) within thirty (30) calendar days of the receipt of the report. The BIA will review the NNTHPO recommendation and make a final determination of eligibility and project effects within thirty (30) calendar days. If the determination is that NRHP-eligible historic properties will not be avoided and will be impacted, the BIA, in consultation with the NNTHPO, shall ensure the Project Proponents develop a Historic Properties Treatment Plan(s) to resolve the adverse effects of the activity, following the procedure outline in Stipulations V(E) and VI(B)(2)(a)(ii), above. If no response from the NNTHPO or BIA is received by the Project Proponent within thirty (30) calendar days, the Project Proponent must continue to contact NNTHPO and BIA in order to obtain an ARPA permit, as applicable.

Attachment H (Unanticipated Discovery Procedures and Protocols) should be followed if an unanticipated discovery occurs.

b) **Actions Involving Historic Buildings or Structures**

The Consulting Parties agree that any adverse effect to NRHP-eligible or listed historic buildings or structures within Navajo Nation jurisdiction resulting from other actions related to the Undertaking shall be resolved through preparation of appropriate: (1) inventory; (2) evaluation of adverse effects; and (3) mitigation.

**3. *Emergency Maintenance and Response***

A number of events can occur within the Project APE that require a rapid response in order to safeguard facilities, provide for protection of wildlife habitat, protect public and private property, and prevent serious injury or loss of human life. These include, but are not limited to: structural or mechanical failure; transmission outages due to maintenance conditions; fire; wind and electrical storms; flood; and earthquake. The emergency maintenance and response procedure is designed to be implemented if such events occur.

Emergency maintenance typically commences within 24 hours of discovery and may occur immediately with notification to the NNTHPO and BIA. When an emergency maintenance activity results in potential impacts to cultural resources, the Project Proponent will follow the expedited procedures outlined below, after the emergency work is completed.

An APS or PNM archaeologist will be notified of the need for emergency maintenance work within twenty-four (24) hours. After the emergency maintenance is conducted, the APS or PNM archaeologist will evaluate the potential impacts to cultural resources and will prepare a report that outlines the emergency work conducted, the impacts, and any proposed mitigation measures within twenty (20) calendar days. The NNTHPO and BIA will review the report within ten (10) calendar days. This provision is applicable to all emergency situations on land within Navajo Nation jurisdiction including allotments owned by individual Navajo members.

**Stipulation VII. Hopi Protocols for APS Transmission Line ROW APE on Hopi Indian Reservation**

**A. Hopi Cultural Preservation Office Authority**

The HCPO is the official branch of the Hopi tribal government that oversees cultural resources management on the Hopi Indian Reservation. The HCPO reviews and issues permits for all outside researchers and contractors seeking to conduct cultural resources work on the Hopi Indian Reservation. In addition, the HCPO has the right of first refusal to conduct any cultural resources projects, including those related to compliance

with Section 106 of the NHPA, on the Hopi Indian Reservation. Therefore, the HCPO will serve as the initial contractor for APS for any work conducted on the Hopi Indian Reservation under this Agreement.

**B. Coordination with the BIA, HCPO, and Arizona SHPO**

BIA Western Region will oversee the identification and complete evaluations of historic properties by Project Proponents within the APE located on the Hopi Indian Reservation, assess effects, and resolve any adverse effects to those historic properties (including appropriate treatment measures) in consultation with the HCPO and Arizona SHPO consistent with the terms of this Agreement.

1. APS will convene an annual meeting with the HCPO, BIA, and Arizona SHPO to discuss anticipated activities for the coming year. At this time, an assessment will be made as to which activities may require further consultation or notification of the HCPO when they are implemented. Activities that are identified as needing no further consultation can be considered as having no potential to impact historic properties and are discussed under Stipulation VII(C)(1) for the purposes of this Agreement. APS will submit a written summary of the annual meeting to the BIA, who will distribute the summary to the HCPO and Arizona SHPO upon receipt.
2. APS will inform the BIA and HCPO immediately as new activities are added or substantial changes occur to previously discussed activities. The BIA will inform Arizona SHPO immediately. The BIA will consult with the HCPO and Arizona SHPO in regard to determination of eligibility and project effects for these new activities, as needed, following the protocols outlined in Stipulation VII(C) and 36 CFR Part 800.
3. Some information regarding historic properties, including TCPs, may be deemed sensitive and should not be released to consulting parties other than the BIA and Arizona SHPO beyond what is necessary for the specific implementation of activities covered under this Agreement. The release of sensitive information is subject to the laws listed in Stipulation III, as applicable. Any use of information regarding historic properties on the Hopi Indian Reservation other than for the purpose of implementing the activities covered under this Agreement requires consultation and concurrence by the HCPO.
4. The HCPO may request to monitor any activities occurring under this Agreement on the Hopi Indian Reservation.

## **C. Routine Maintenance**

Routine maintenance is defined as those activities required in order to maintain existing infrastructure in a safe, operational status. It includes activities that do not result in ground disturbance and those that have the potential to cause ground disturbance.

### ***1. Activities with No Potential to Effect Historic Properties***

The Consulting Parties agree that activities that do not have the potential to affect historic properties will require no further review or consultation beyond that identified under Stipulation VII(B). APS will concurrently notify the BIA and HCPO when work crews will be conducting these activities. The BIA will notify Arizona SHPO upon receipt of notification. These types of activities include, but are not limited to, aerial maintenance and non-earth-disturbing operation and maintenance activities.

Examples of aerial maintenance include but are not limited to:

- Maintenance, retrofit, or replacement of above-ground electric Transmission Line structure components including insulators, hardware, cross-braces, cross-members, static cable lines, or switches, and conductors.

Examples of non-earth-disturbing activities include but are not limited to:

- Transmission Line patrols on existing roads,
- Repair, replacement, or installation of transmission pole numbers,
- Repair, replacement, or installation of pole-mounted components such as insulators, conductors, cross arm, bracing, and associated hardware,
- Electric line spotting,
- Vegetation management within the ROW using non-mechanical means including crews with chainsaws and the application of approved herbicides by backpack-mounted sprayers or light mechanical means including quad-mounted sprayers, during dry conditions, and
- Annual maintenance inspection with truck, maintenance with bucket truck, and access to ROW by dirt access road, during dry conditions.

Should any previously unidentified or undocumented historic properties be encountered during the performance of an activity with no potential to impact historic properties, the procedures provided in Attachment H (Unanticipated Discovery Procedures and Protocols) should be followed.

## ***2. Activities with Potential to Effect Historic Properties***

Any activity that may cause surface or subsurface ground disturbance is considered to have the potential to impact historic properties. This includes, but is not limited to:

- Repair of existing access roads, including blading, and the development of new access roads,
- Erosion control work to protect the ROW from erosion,
- Excavations to repair or replace ground wires,
- Excavations immediately around the base of transmission poles,
- Maintenance, repair, installation, or replacement of certain ancillary facilities including, but not limited to, gates, fences, and signs, or
- Vegetation management within the ROW using mechanical means, which include but are not limited to mowers.

For these types of activities, APS will first conduct an internal review process in collaboration with HCPO to determine if the activity is within the Project ROW or previously inventoried APE.

- a. If the activity is within the Project ROW or previously inventoried APE, APS, in collaboration with the HCPO, will assess the potential existence of historic properties, including TCPs, through a review of existing field surveys and other information on historic properties (including historic properties identified in Attachment C). Prior to the commencement of the activity, an APS archaeologist will confirm with the HCPO the results of the findings and the presence or absence of historic properties.

### ***(i) No Historic Properties Present***

If the review process identifies that there are no historic properties present, APS will record the collaborative determination and report the activity and determination in a summarized annual comment matrix to the BIA and Arizona SHPO as specified in Stipulation XII.

### ***(ii) Historic Properties Present***

If the review process determines that historic properties are present, APS and HCPO will assess whether the planned activity will affect the historic properties present and make either of the following determinations:

- **No Historic Properties Affected.** If APS and HCPO collaboratively agree on measures that will avoid effects to historic properties, which may include adequate avoidance distance and/or the presence of an

HCPO monitor, then the activity will have a finding of no historic properties affected. When APS and HCPO implement such measures that will have no effect to historic properties, APS will record the collaborative decision and report the activity and decision in a summarized annual comment matrix to the BIA and Arizona SHPO as specified in Stipulation XII.

- **Adverse Effects.** If the results of the evaluation process indicate that cultural resources will be impacted, APS will develop a Historic Properties Treatment Plan(s) with measures to reduce or mitigate those impacts. Any cultural resource work on Hopi land will be conducted by the HCPO, pursuant to the right of first refusal in Stipulation VII(A) or by a consultant or independent researcher who is licensed to carry out the work in a manner consistent with Section 5 of Hopi Ordinance 26.

APS will submit the Historic Properties Treatment Plan(s) to the BIA and HCPO for concurrent thirty (30) day review. The BIA will forward the Historic Properties Treatment Plan(s) to the Arizona SHPO after incorporation of HCPO review comments. The Arizona SHPO will conduct an thirty (30) calendar day review and comment period. Comments from the BIA, HCPO, and Arizona SHPO will be incorporated into the Historic Properties Treatment Plan by APS. APS shall conduct the mitigation work upon approval of the Historic Properties Treatment Plan and submit the preliminary report. Work on the planned activity can commence after the preliminary report is reviewed and commented on by the BIA, in consultation with the HCPO and Arizona SHPO.

A Treatment Plan(s) for historic properties may include data recovery. Stipulation VII(D) outlines the development and review of a Data Recovery Plan(s) and review of findings, subject to applicable ARPA permit requirements.

- b. Activities in any areas not previously inventoried, including new access routes into the ROW, and any areas added to the APE in the event of future potential Project modifications, shall be subject to Section 106 compliance consistent with the process established in this Agreement. The HCPO will be provided the first right of refusal to conduct the necessary research and identify and evaluate the historic properties. Should the HCPO decide not to conduct the work, an outside

permitted contractor may be employed by APS provided the outside contractor follows the HCPO permitting process. APS will provide funding to complete any additional identification and evaluation under this section.

Preliminary technical documentation completed under this section will be provided to APS and the BIA. Upon receipt, the BIA will provide the documentation to the HCPO (if documentation is completed by an outside entity) for a concurrent thirty (30) day review period. The BIA will forward the preliminary documentation to Arizona SHPO once HCPO comments have been incorporated for a thirty (30) day review period. Once the inventory process has been completed, the procedures outlined in Stipulation VII(C) will be followed.

#### **D. Historic Property Treatment Plan(s) for Mitigation of Adverse Effects to Archaeological Sites**

##### ***1. Development of a Data Recovery Plan(s) as Treatment of Adverse Effects***

Consistent with Stipulation VII(A), APS will develop a Data Recovery Plan(s), in cooperation with the HCPO, for data recovery of historic properties and archaeological sites that cannot be avoided by activities, if agreed upon by the HCPO, BIA, and Arizona SHPO. The Data Recovery Plan will be consistent with the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation (48 *Federal Register* 44734-37), the ACHP's *Handbook for Treatment of Archaeological Properties*, and the ACHP's *Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites* (May 18, 1999). Data Recovery Plans will recognize the cultural values of archaeological sites and will incorporate tribal insights and resources to elucidate site context and meaning.

The Data Recovery Plan will specify:

- a. The properties or portion of properties where data recovery is to be carried out. The Data Recovery Plan will also specify any property or portion of property that would be destroyed or altered without treatment along with the rationale for not treating the property or portion of property.
- b. The results of previous research relevant to the Undertaking on the Hopi Indian Reservation including archaeological and ethnographic works.
- c. The research questions to be addressed through data recovery, with an explanation of their relevance and importance within an appropriate tribal and historical context.
- d. The field and laboratory analysis methods to be used, consistent with Stipulation VII(A), with an explanation of their relevance to the research questions. Analyses



shall incorporate information held by elders and ethnographic research in addition to standard archaeological methods.

- e. The methods to be used for disseminating data to the professional community and the public, taking into account that some information may be deemed sensitive and should be protected, consistent with Stipulation III.
- f. A proposed schedule for project tasks, and a schedule for the submission of draft and final reports to the Consulting Parties.
- g. The proposed disposition and curation of recovered materials and records in accordance with Stipulation XI, consistent with ARPA (Section 4.b.3) and the Antiquities Act of 1906 (16 USC 432[3]).
- h. A Monitoring and Discovery Plan outlining the procedures for monitoring and ensuring compliance with Attachment H and governing unexpected discoveries or newly identified properties during geotechnical investigations or construction of the Project.
- i. A protocol for ensuring compliance with Attachment H, governing discovery of human remains, funerary objects, sacred ceremonial objects, or objects of cultural patrimony.

## ***2. Review and Comment on the Data Recovery Plan(s)***

- a. APS or the HCPO, as appropriate, will distribute the draft Data Recovery Plan to the BIA and HCPO (if documentation is completed by an outside entity) for thirty (30) calendar day review. The BIA will submit the draft Data Recovery Plan after incorporation of HCPO comments to Arizona SHPO for thirty (30) calendar day review. All comments shall be in writing (electronic mail is acceptable) and provided to the BIA, who will forward the comments on to APS. If a response is not received during the review period, the BIA will contact the appropriate consulting parties.
- b. If revisions to the Data Recovery Plan are made, APS or the HCPO will distribute the revised Data Recovery Plan to the BIA and HCPO (if documentation is completed by an outside entity) for concurrent thirty (30) calendar day review. The BIA will submit the revised Data Recovery Plan after incorporation of HCPO comments to Arizona SHPO for a thirty (30) calendar day review. All comments will be in writing (electronic mail is acceptable) and provided to the BIA, who will forward the comments onto APS. If a response is not received during the review period, the BIA will contact the appropriate consulting parties.
- c. APS will provide the final Data Recovery Plan to the BIA and HCPO. The BIA will forward the final Data Recovery Plan to the Arizona SHPO.

### ***3. Review and Comment on the Preliminary Report of Findings***

- a. If necessary, an in-field meeting will be held upon completion of Phase I fieldwork to apprise the BIA, HCPO, and Arizona SHPO of the methods employed and the preliminary results of the field effort. If appropriate, Phase II data recovery will begin immediately upon in-field approval by the BIA, HCPO, and Arizona SHPO of the results of Phase I fieldwork. APS shall provide a written summary via letter or email to the BIA, HCPO, and Arizona SHPO summarizing the in-field meeting.
- b. Within fourteen (14) calendar days after the completion of all fieldwork, the party responsible for the work will prepare a brief Preliminary Report of Findings. This report shall contain, at a minimum:
  - A discussion of the methods and treatments applied to each property, with an assessment of the degree to which these methods and treatments followed the direction provided by the Data Recovery Plan along with a justification of all deviations, if any, from the approved Data Recovery Plan;
  - Topographic site plans for the properties depicting all features and treatment areas;
  - General description of recovered artifacts and other data classes, including features excavated or sampled; and
  - Discussion of other analyses to be conducted for the Data Recovery Report, including any proposed changes in the methods or levels of effort from those proposed in the Data Recovery Plan.
- c. APS or the HCPO, as appropriate, will distribute the draft Preliminary Report of Findings to the BIA and HCPO for concurrent thirty (30) day review. The BIA will distribute the draft Preliminary Report of Findings after incorporation of HCPO comments to the Arizona SHPO for thirty (30) day review. All comments shall be in writing (electronic mail is acceptable) and provided to the BIA, who will forward the comments on to APS. If a response is not received during the review period, the BIA will contact the appropriate consulting parties.
- d. If revisions to the Preliminary Report of Findings are made, APS will provide the report to the BIA and HCPO for a concurrent thirty (30) calendar day review. The BIA will forward the revised Preliminary Report of Findings after incorporation of HCPO comments to the Arizona SHPO for thirty (30) calendar day review. All comments shall be in writing (electronic mail is acceptable) and provided to the BIA, who will forward the comments on to APS. If a response is not received during the review period, the BIA will contact the appropriate consulting parties.
- e. APS or the HCPO, as appropriate, shall ensure that any written comments received are taken into account during the preparation of the final document.

- f. If the BIA, HCPO, or Arizona SHPO objects to any aspect of the report, the BIA shall resolve the objection according to Stipulation XIV.
- g. Once the Preliminary Report of Findings has been accepted as a final document, data recovery efforts will be deemed complete and in compliance with the agreed-upon goals, and APS can commence the activity.

#### ***4. Review and Comment on Data Recovery Report***

- a. Within 180 calendar days of completion of data recovery, a report will be prepared incorporating all appropriate data analyses and interpretations;
- b. APS or the HCPO, as appropriate, will distribute the draft Data Recovery Report to the BIA and HCPO (if documentation is completed by an outside entity) for concurrent thirty (30) calendar day review. The BIA will distribute the draft Data Recovery Report after incorporation of HCPO comments to the Arizona SHPO for thirty (30) calendar day review. All comments shall be in writing (electronic mail is acceptable) and provided to the BIA, who will forward the comments on to APS. If a response is not received during the review period, the BIA will contact the appropriate consulting parties.
- c. If revisions to the Data Recovery Report are made, APS will forward the report to the BIA and HCPO for concurrent twenty (20) calendar day review. The BIA will forward the revised Data Recovery Report after incorporation of HCPO comments to the Arizona SHPO for twenty (20) calendar day review. All comments shall be in writing (electronic mail is acceptable) and provided to the BIA, who will forward the comments on to APS. If a response is not received during the review period, the BIA will contact the appropriate consulting parties.
- d. APS or the HCPO, as appropriate, shall ensure that any written comments received are taken into account during the preparation of the final document.
- e. If the BIA, HCPO, and Arizona SHPO continue to object to any aspect of the report, the BIA shall resolve the objection according to Stipulation XIV, governing dispute resolution.

#### **E. Historic Property Treatment Plan(s) for Mitigation of Adverse Effects to Non-Archaeological Sites**

Consistent with Stipulation VII(A), APS will develop Historic Property Treatment Plan(s), in cooperation with the HCPO, for alternative mitigation measures concerning types of historic properties that are significant due solely to cultural values (non-archaeological TCPs) when these historic properties cannot be avoided by activities. BIA, in consultation with HCPO, will consult with Arizona SHPO for concurrence on the proposed treatment plans, as specified in Stipulation VII(C)(2)(a)(ii). Treatment

plans shall include any timelines for completion, reporting and subsequent commencement of the activity.

#### **F. Emergencies**

A number of events can occur within the Project APE that require a rapid response to safeguard facilities, provide for protection of wildlife habitat, protect public and private property, and prevent serious injury or loss of human life. These include, but are not limited to:

- Structural or mechanical failure;
- Transmission outages due to maintenance conditions;
- Fire;
- Wind and electrical storms;
- Flood; and
- Earthquake.

Emergency maintenance typically commences within twenty-four (24) hours of discovery. APS will notify the HCPO and BIA by email or phone with written confirmation as soon as reasonably practicable after an emergency activity. Upon receipt of this confirmation, the BIA will notify the Arizona SHPO via email and phone. APS will take all reasonable measures to conduct an expedited review for the potential presence of historic properties in the area of the emergency as outlined in Stipulation VII(C)(2) above and notify the HCPO and BIA of the results as soon as completed, where practicable.

If the emergency maintenance activity is likely to result in potential impacts to known cultural resources or if there has not been a historic properties inventory of the area, then APS will enable APS cultural program staff and HCPO staff to conduct monitoring of the emergency maintenance. APS will provide for expedited documentation of any historic properties that are encountered, where practicable. Efforts will be made to avoid or minimize impacts to any historic properties identified during the emergency maintenance activities. APS will submit a report detailing the activities that occurred during the emergency maintenance within fifteen (15) calendar days of the incident to the HCPO and BIA. If historic properties are affected, the BIA will forward the documentation after incorporation of HCPO comments to the Arizona SHPO for a fifteen (15) day review period. This provision is applicable to all emergency situations on Hopi lands.

## **G. Replacement of SHPO by Hopi THPO**

At the current time, the Hopi Tribe has not assumed the role of the Arizona SHPO. Should that occur during the duration of this Agreement, the roles of the Arizona SHPO will be replaced by the Hopi THPO. The replacement of the Arizona SHPO by Hopi THPO would require an amendment to this Agreement pursuant to Stipulation XVII.

## **Stipulation VIII. Protocols for Federal, State, and Private Lands, and Zia Pueblo Lands, in APE for PNM Transmission Lines**

### **A. Coordination with the BIA, Applicable Federal Land Manager, Zia Pueblo, NM SLO and/or New Mexico SHPO**

The BIA, as lead federal agency, will coordinate with applicable federal land managers, Zia Pueblo, and the New Mexico SHPO as follows:

- The BIA Navajo Region will oversee the identification and completion of evaluations of historic properties by Project Proponents within the APE located on BLM land, assess effects, and resolve any adverse effects to those historic properties (including appropriate treatment measures) in consultation with BLM, New Mexico SHPO, and other consulting parties consistent with the terms of this Agreement.
- The BIA Navajo Region will oversee the identification and completion of evaluations of historic properties by Project Proponents within the APE located on NPS land, assess effects, and resolve any adverse effects to those historic properties (including appropriate treatment measures) in consultation with the NPS and New Mexico SHPO consistent with the terms of this Agreement.
- BIA Southwest Region will oversee the identification and complete evaluations of historic properties by Project Proponents within the APE located on Zia Pueblo land, assess effects, and resolve any adverse effects to those historic properties (including appropriate treatment measures) in consultation with Zia Pueblo and New Mexico SHPO consistent with the terms of this Agreement.
- The BIA Navajo Region will oversee the identification and completion of evaluations of historic properties by Project Proponents within the APE located on New Mexico State Trust Land, assess effects, and resolve any adverse effects to those historic properties (including appropriate treatment measures) in consultation with the NM SLO and the New Mexico SHPO consistent with the terms of this Agreement.

- The BIA Navajo Region will oversee the identification and completion of evaluations of historic properties by Project Proponents within the APE located on private property, assess effects, and resolve any adverse effects to those historic properties (including appropriate treatment measures) in consultation with the New Mexico SHPO consistent with the terms of this Agreement.

## **B. Operation and Maintenance**

### ***1. Procedures that have been Determined not to Affect Historic Properties***

The Consulting Parties to this Agreement agree that most activities related to operation and maintenance of the Transmission Lines are not likely to affect historic properties. In general, these activities occur largely on the surface in areas that are already disturbed, do not introduce new structural or visual elements, and require only nominal ground disturbance or alterations to existing structures. Therefore, the Consulting Parties agree that the following Project operations and maintenance activities will not affect historic properties and are exempt from further review/consultation:

#### **a) Aerial Maintenance and Non-Earth-Disturbing Operation and Maintenance Activities**

The Consulting Parties agree that routine aerial maintenance and non-earth-disturbing activities will not affect historic properties. When the routine maintenance consists solely of aerial maintenance or non-earth-disturbing activities, the activity does not require prior notification, review, assessments, or consultation with federal agencies or Consulting Parties and no notice will be given. Additionally, no review by PNM will be required for these activities.

Examples include but are not limited to:

- Maintenance, retrofit, or replacement of above-ground electric Transmission Line structure components including insulators, hardware, cross-braces, cross-members, static cable lines, or switches, and conductors;
- Filling voids or cavities in the wood of utility poles;
- Transmission and distribution electric line patrols;
- Repair, replacement, or installation of transmission pole numbers;
- Repair, replacement, or installation of pole-mounted components such as insulators, conductors, cross-arm, bracing, and associated hardware;
- Transmission and distribution electric line patrols;
- Remote or manual electrical switching work, including turning electric services on or off;

- Electric line spotting;
  - Vegetation management within the ROW using means that do not cause ground disturbance including crews with chainsaws and the application of approved herbicides by backpack-mounted sprayers or quad-mounted sprayers, which shall occur during dry conditions when through historic properties; and
  - Annual maintenance inspection with truck, maintenance with bucket truck, and access to ROW by dirt access road, which shall occur during dry conditions when through historic properties.
- b) Earth-Disturbing Activities in Areas of Previous Disturbance that have been Surveyed and have no Historic Properties within 50 Feet

The Consulting Parties agree that when the routine maintenance consists solely of earth-disturbing activities in areas of previous disturbance that have been surveyed and have had no historic properties identified within 50 feet, the activity does not require prior notification, review, assessments, or consultation with federal agencies or Consulting Parties and no notice will be given. A PNM archaeologist will review and confirm that there are no historic properties within 50 feet. If while preparing for the work activity, it is discovered that a known historic property exists within 50 feet of the activity, procedures for areas previously surveyed and containing cultural resources within 50 feet of the activity described in Stipulation VIII(B)(2)(a)(ii) will be followed. If there are no known historic properties within 50 feet of the activity, no further review is required for these activities.

Examples of earth-disturbing activities in areas of previous disturbance that have been surveyed and have had no historic properties identified within 50 feet include but are not limited to:

- Anchor repair and maintenance (involves digging 1 to 3 feet in diameter and up to 1 to 2 feet in depth around an existing anchor to remove wind-blown deposits and expose the anchor rod and buried guy wires);
- Road blading on existing, previously bladed access roads where blading would be confined to the existing road prism and erosion control work;
- Erosion control work to protect the ROW from erosion in areas of previous disturbance;
- Excavations to repair or replace ground wires;
- Excavations immediately around the base of transmission poles;
- Re-grading previously established, mechanically leveled pads around transmission structures to permit safe equipment set-up;

- Work within existing fenced/walled perimeters of electric substations or switching stations;
- Remedial treatment of poles (involves disturbing approximately 1 to 2 feet in diameter and up to 3 feet in depth around the base of an existing pole to examine pole condition and possibly apply a treatment);
- Maintenance, repair, replacement, and installation of poles;
- Maintenance, repair, installation, or replacement of certain ancillary facilities including, but not limited to, gates, fences, and signs; and/or
- Repair of existing access roads that do not traverse historic properties using in-kind materials with all work conducted within the existing footprint of the road.

c) **Actions Involving Historic Buildings or Structures**

The Consulting Parties agree that any adverse effect to NRHP-eligible or listed historic buildings or structures resulting from other actions related to the Undertaking shall be resolved through preparation of appropriate: (1) inventory; (2) evaluation of adverse effects; and (3) mitigation.

***2. Procedures for which Additional Evaluation is Required***

For activities that may affect historic properties, PNM and PNM's archaeologist will first conduct the following internal review process, as appropriate to the activity, and in conformance with applicable standards in Stipulation II:

- Determine if the work is within the Project APE;
- If the work is within the Project APE, review existing information on historic properties (including historic properties identified in Attachment C);
- Assess the potential existence of historic properties by reviewing existing field survey and other research;
- Determine the degree of existing disturbance by performing a field inspection as appropriate and then follow Stipulation VIII(B)(2)(a) as appropriate.

a) **Earth-Disturbing Activities in Non-Disturbed Areas**

The Consulting Parties agree that when the routine maintenance activities result in earth-disturbing activities in areas that may have not been previously disturbed, the activity is subject to the following additional processes:

*(i) Area Previously Surveyed and Found to have No Historic Properties*



If the area has been previously surveyed and no historic properties have been identified, PNM will proceed with the routine maintenance. No notification or approval will be required before work begins. PNM will maintain records of activities that proceed under these circumstances for a period of three (3) years. During that time, records will be made available to the BIA and Consulting Parties.

*(ii) Area Previously Surveyed and Containing Cultural Resources within 50 Feet of the Activity*

If the area has been previously surveyed and cultural resources have been identified within 50 feet of the activity, a permitted cultural resources contractor will evaluate the anticipated effect of the routine maintenance activity on the known resource prior to commencement of the activity in consultation with the BIA.

**No Historic Properties Affected.** If the results of the internal evaluation process indicate that any identified cultural resources can and will be avoided, PNM will submit a Maintenance Evaluation Report via email or as hard copy to the BIA and Consulting Parties. This report will confirm that the resources can and will be avoided and PNM may proceed with the activity. No response or approval will be required before work begins.

**No Adverse Effect.** If the results of the internal evaluation process indicate that identified cultural resources exist in the activity area, but adverse effects can be avoided, PNM will submit a Maintenance Evaluation Report via email or as a hard copy to the BIA and the applicable federal land manager and New Mexico SHPO for federal lands or New Mexico State Trust Lands for a thirty (30) calendar day review and comment period. Work on the planned activity can commence after review and concurrence with the No Adverse Effect determination. If no response from the applicable federal land manager, the New Mexico SHPO or the BIA is received by PNM within thirty (30) calendar days, PNM may proceed with the activity.

**Adverse Effects.** If the results of the internal evaluation process indicate that cultural resources will be impacted, PNM will submit a Historic Properties Treatment Plan(s) via email or as hard copy to the BIA and the applicable federal land manager and New Mexico SHPO for federal lands or New Mexico State Trust Lands for a thirty (30) calendar day review and comment period. Work on the planned activity can commence after review and written approval of the Historic Properties Treatment Plan by the BIA, in consultation with the applicable

federal land manager and New Mexico SHPO, and after the plan's execution by PNM. If treatment entails avoidance and no response from the applicable federal land manager and/or New Mexico SHPO and/or the BIA is received by PNM within thirty (30) calendar days, PNM may proceed with the activity provided PNM follows the resource management recommendations outlined in the Historic Properties Treatment Plan(s).

*(iii) Area has not been Previously Surveyed*

A permitted cultural resources contractor will conduct a survey of the area by systematically walking over the ground surface, including those areas listed in Attachment G of this Agreement, and in any areas later added to the APE in the event of future potential modifications after issuance of any ROD including new access into the ROW, provided the agency permitting processes are followed. This survey is designed to gather information about potential cultural resources prior to the commencement of the maintenance activity and will determine whether cultural resources are likely to be present. The following procedures will be implemented depending on the findings of the cultural resources survey:

**Negative Survey.** If the survey results indicate no cultural resources are present, PNM will submit a negative survey report via email or as hard copy within ten (10) calendar days of conducting the survey to the BIA. The BIA will review and submit the report to the applicable federal land manager and New Mexico SHPO for federal lands or New Mexico SHPO for New Mexico State Trust Lands for an expedited 15 calendar day review and comment period. Work may commence upon written authorization by BIA, in consultation with the applicable federal land manager and New Mexico SHPO. In the event that no response is received from the BIA after 15 days, PNM may assume that the BIA concurs with the survey results and proceed with the activity.

**Positive Survey.** If cultural resources are identified during the survey, they will be recorded on applicable forms. PNM will submit a written report via email or as hard copy, following applicable guidelines, to the BIA and the applicable federal land manager for federal lands for review. The BIA will send the report to the New Mexico SHPO for a thirty (30) calendar day review and comment period. The BIA, in consultation with the applicable federal land manager and New Mexico SHPO, will determine the NRHP eligibility of any newly recorded cultural resources in the APE in accordance with 36 CFR § 800.4 (c), the potential effects of the activity in accordance with 36 CFR § 800.4 (d), where historic properties may be affected, and the determinations of any impacts of the proposed activity (as outlined in 36 CFR § 800.5) within thirty (30) calendar days of receipt

of the report. The BIA, in consultation with applicable federal land manager and New Mexico SHPO, will also decide any necessary mitigation measures, the implementation of which will be required prior to work proceeding at the activity location. The Project Proponent may proceed with the activity upon written approval by BIA, in consultation with the federal land manager and New Mexico SHPO. If no response from the applicable federal land manager and/or New Mexico SHPO is received within thirty (30) calendar days, PNM may proceed with the activity provided PNM follows the management recommendations outlined in the report.

### **C. Emergency Maintenance and Response**

A number of events can occur within the Project APE that require a rapid response in order to safeguard facilities, provide for protection of wildlife habitat, protect public and private property, and prevent serious injury or loss of human life. These include, but are not limited to: structural or mechanical failure; transmission outages due to maintenance conditions; fire; wind and electrical storms; flood; and earthquake. The emergency maintenance and response procedure is designed to be implemented in the event such events occur.

Emergency maintenance typically commences within twenty-four (24) hours of discovery. After the emergency work is completed, if the activity results in impacts to cultural resources, PNM will follow the record-keeping and reporting procedures for areas previously surveyed and found to have cultural resources within 50 feet of the activity, as outlined in Stipulation VIII(B)(2)(a)(ii). PNM's archaeologist will be notified of the need for emergency maintenance work within twenty-four (24) hours.

## **Stipulation IX. Cultural Resources Awareness Training**

APS and PNM will develop cultural resources awareness training and ensure that appropriate APS and PNM personnel complete that training. APS will consult with the BIA, NNTHPO, HCPO, and Arizona SHPO in developing the training. PNM will consult with the BIA, NNTHPO, BLM, NPS, Zia Pueblo, and New Mexico SHPO in developing the training.

## **Stipulation X. Unanticipated Discoveries During Operation and Maintenance of the Project**

### **A. Unanticipated Discoveries of Archaeological Resources**

1. If the discovery occurs within the Navajo Nation jurisdiction or on allotments owned by individual Navajo members, the *Navajo Nation Guidelines for Discovery Situations*, as listed in Attachment H pages H-1 through H-6, will

be followed by the NNTHPO, BIA Navajo Region, and APS or PNM, as appropriate.

2. If the discovery occurs within the Hopi Indian Reservation, guidance in Attachment H, page H-8, will be followed by the HCPO, BIA Western Region, Arizona SHPO, and APS.
3. If the discovery occurs within Zia Pueblo lands, guidance from Section 106 of the NHPA and ARPA, as listed in Attachment H pages H-10 and H-11, will be followed by the Zia Pueblo, BIA Southwest Region, New Mexico SHPO, and PNM.
4. If the discovery occurs within federal lands, guidance from Section 106 of the NHPA and ARPA, as listed in Attachment H pages H-12 and H-13, will be followed by the federal land manager, BIA, New Mexico SHPO, and PNM.
5. If the discovery occurs within New Mexico State or private lands, the New Mexico Cultural Properties Act (New Mexico Statute Part 18-6-1 through 18-6-17, as amended through 2005) and implementing regulation 4.10.8, New Mexico Administrative Code (NMAC), as listed in Attachment H pages H-15 and H-16, will be followed by the New Mexico SHPO, BIA, and PNM.

#### **B. Unanticipated Discovery of Human Remains, Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony**

When an unmarked human burial or unregistered grave is encountered during operation and maintenance activities, the Project Proponent will ensure that any and all human remains, sacred objects, and objects of cultural patrimony will be treated with dignity and respect.

1. Discovery of Human Remains, Funerary Objects, and Objects of Cultural Patrimony Within the Jurisdiction of the Navajo Nation and on Allotments Owned by Individual Navajo members

Upon discovery, APS or PNM will comply with applicable laws and regulations, including, but not limited to, Navajo Nation Policy for the Protection of Jishchaa', Navajo Nation CRPA (CMY-19-88), Navajo Nation Policy for the Disposition of Cultural Resource Collections, and Navajo Nation Guidelines for Discovery Situations, as summarized in Attachment H pages H-6 and H-7.

2. Hopi Indian Reservation

Upon discovery, APS will comply with applicable laws and regulations including NAGPRA (25 USC 3001[3]; 43 CFR § 10), ACHP Policy

Statement Regarding the Treatment of Burial Sites, Human Remains, and Funerary Objects (February 23, 2007), and any guidance provided by the HCPO. Policies and guidelines are provided in Attachment H page H-9.

3. Zia Pueblo Lands

Upon discovery, PNM will comply with applicable laws and regulations including NAGPRA (25 USC 3001[3]; 43 CFR § 10), ACHP Policy Statement Regarding the Treatment of Burial Sites, Human Remains, and Funerary Objects (February 23, 2007), and any guidance provided by the Zia Pueblo. Policies and guidelines are provided in Attachment H page H-11.

4. Federal Lands

Upon discovery, PNM will comply with applicable laws, regulations, and guidelines including NAGPRA (25 USC 3001[3]; 43 CFR § 10), and ACHP Policy Statement Regarding the Treatment of Burial Sites, Human Remains, and Funerary Objects (February 23, 2007). Policies and guidelines are provided in Attachment H page H-13 and H-14.

5. New Mexico State or Private Lands

Upon discovery, PNM will comply with the New Mexico Cultural Properties Act (N.M. Stat. Part 18-6-11.2, as amended through 2005) and implementing regulation 4.10.11, NMAC. The ACHP Policy Statement Regarding the Treatment of Burial Sites, Human Remains, and Funerary Objects (February 23, 2007) shall also be followed. Policies and guidelines are provided in Attachment H pages H-16 and H-17.

## **Stipulation XI. Curation**

1. The BLM and NPS may curate any artifacts, materials, and records resulting from archaeological identification and mitigation conducted on federal lands under their jurisdiction in accordance with 36 CFR Part 79 and NAGPRA (25 USC 3001[3]; 43 CFR Part 10). Human remains and associated funerary objects shall not be curated.
2. On land controlled or owned by the BLM and NPS, those agencies will determine the disposition of human burials, human remains, and funerary objects in accordance with applicable federal law and in consultation with affected tribes and New Mexico SHPO, if discovery is within an archaeological site.

3. Any artifacts, materials, and records recovered from BLM jurisdiction will be curated at the expense of PNM.
4. PNM will return all artifacts recovered from private lands, except human remains and associated funerary objects, to the respective landowner after analysis is complete. For collections from private lands, PNM will encourage the private landowner to donate collections to an approved curation facility. PNM shall pay all required curation fees associated with the donation.
5. All artifacts recovered from lands owned, controlled, or operated by the State of New Mexico, including associated records and documentation, shall be curated at the Museum of New Mexico, Museum of Indian Arts and Culture, at the expense of PNM.
6. On Tribal Trust Land, the tribe, as owner of the artifacts, shall determine the final deposition of the artifacts and records. Should the tribe prefer that the artifacts be curated at a museum or repository, APS or PNM, as appropriate, shall ensure these items are transported and accessioned at the selected institution.
7. On BIA lands acquired by Public Land Order 2198, which are sometimes referred to as BIA Administrative Lands, the artifacts become the property of the U.S. Government (BIA) and shall be curated in accordance with 36 CFR Part 79 at the expense of APS.
8. NNTHPO may curate any artifacts, materials, and records resulting from archaeological identification and mitigation conducted within Navajo Nation jurisdiction in accordance with applicable laws and regulations, including Navajo Nation Policy for the Protection of Jishchaa', Navajo Nation CRPA (CMY-19-88), and Navajo Nation Policy for the Disposition of Cultural Resource Collections.
9. The HCPO may curate any artifacts, materials, and records resulting from archaeological identification and mitigation conducted within Hopi Indian Reservation under their jurisdiction in accordance with applicable laws and regulations at the expense of APS.
10. If the work is on Allotted Indian Land held in trust for the allottee and their heirs or otherwise subject to a restraint on alienation (Allotted Indian Land) and the owner(s) wants the artifacts, the artifacts (except for human remains, funerary objects, sacred objects, and objects of cultural patrimony) will be given to the owner(s) after a reasonable study time.
11. If the work is on Allotted Indian Land and the owner(s) wants the artifacts in order to sell them, BIA will not give the artifacts to the allotted land owner, and instead will ask the Navajo Nation as to disposition of the artifacts after any study is completed. 25 CFR § 262.8(c) gives authority to withhold artifacts if an agency believes the landowners will sell them.

12. If the work is on Allotted Indian Land and the owner(s) does not want the artifacts, the Navajo Nation will be consulted as to disposition of artifacts after study.
13. If artifacts are recovered on Allotted Indian Land that is located outside the jurisdiction of the Navajo Nation and the owner(s) does not want the artifacts, the BIA will consult with various tribes and the applicable SHPO/THPO as to the disposition after study. In New Mexico, if the tribe declines, the artifacts, materials, and records shall be curated at the Museum of Indian Arts and Culture, at the expense of APS or PNM, as appropriate.

## **Stipulation XII. Reporting**

1. The Project Proponents will prepare a summary matrix of activities related to the Undertaking within the APE, including activities associated with identification, evaluation, mitigation, and emergency maintenance of historic properties as listed in Attachment C. The summary matrix will be completed yearly by January 25 in each year (until termination of this Agreement as outlined in Stipulation XVIII) and submitted to the BIA. The BIA will forward the summary matrix to the Consulting Parties for review and comment. Consulting Parties will have thirty (30) days to comment on the summary matrix and respond to the BIA. APS or PNM will address comments and will submit a final summary matrix to the BIA. The BIA will forward the final summary matrix to Consulting Parties.
2. APS will provide a summary matrix of all activities related to the Undertaking within the Hopi Indian Reservation for which consultation was not conducted. The summary matrix will be completed yearly by January 25 in each year (until termination of this Agreement as outlined in Stipulation XVIII) and submitted to the BIA and HCPO for concurrent thirty (30) day review. The BIA will forward the summary matrix to the Arizona SHPO for thirty (30) day review. APS will address comments and will submit a final summary matrix to the BIA and HCPO. The BIA will forward the final summary matrix to the Arizona SHPO.
3. Every two years following the execution of this Agreement until it expires or is terminated, BIA with the assistance of the Project Proponents, BLM, EPA, OSMRE, and ACHP, as necessary, will provide the SHPOs, consulting Indian tribes, and other Consulting Parties a Progress Report summarizing the work carried out pursuant to its terms. The Progress Report will be submitted by March 1 of each bi-annum. Such report will include any scheduling changes proposed, any issues encountered, and any disputes and objections received in the efforts to carry out the terms of this Agreement. The BIA will maintain and update a list of current contact information for the SHPOs, consulting

Indian tribes, and other Consulting Parties and will be distributed in each report. The Consulting Parties will have thirty (30) calendar days to review and comment on the report unless otherwise extended by the BIA. The BIA will address comments and will submit a final Progress Report to the Consulting Parties within thirty (30) calendar days of comments received.

4. Every two years, with assistance by APS and PNM, the BIA will also organize a meeting for all Consulting Parties after the comment period has ended and prior to the completion of the final report.
5. APS and PNM shall address timely comments and recommendations submitted by the BIA and other consulting parties on the Progress Report and will submit a final report. Upon acceptance by the BIA, the final report will be submitted by the BIA to the NNTHPO, HCPO, SHPOs, and other consulting parties.
6. Other reports associated with the operations and maintenance of the power plant and Transmission Lines will follow the protocols set forth in Stipulations V, VI, VII, and VIII.

### **Stipulation XIII. No Waiver of Rights or Obligations between APS and Navajo Nation**

1. This Agreement is intended strictly to satisfy the federal agencies' Section 106 responsibilities for this Undertaking. Nothing in this Agreement shall be deemed a waiver of any rights or obligations of any Party under any existing leases or ROWs, including but not limited to the covenant not to regulate granted to APS. APS, through this Agreement, voluntarily agrees to work with the NNTHPO to determine protocols for the identification, evaluation, and treatment of historic properties that are mutually acceptable to the NNTHPO and APS, and is intended to establish a practical substitute for Navajo Nation jurisdiction.
2. The Consulting Parties agree that the acts or omissions of the Consulting Parties pursuant to this Agreement have no effect on the scope, validity, or effect of the "covenant not to regulate", and do not constitute a waiver, abandonment, forfeiture, or relinquishment of APS's rights to invoke the "covenant not to regulate" either during pendency of or upon expiration or termination of this Agreement.
3. The Consulting Parties further agree that this Agreement and any actions taken pursuant to this Agreement may not be used, or offered or entered into evidence, in any proceeding relating to the jurisdictional authority or lack of jurisdictional authority of the Navajo Nation over APS, including without limitation any proceeding concerning the scope, validity, or effect of the covenant not to regulate.



## **Stipulation XIV. Dispute Resolution**

1. Should any Signatory or Invited Signatory to the Agreement object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, that party shall promptly notify BIA with written notice and a recommended resolution. The BIA will consult with such party to resolve the objection within thirty (30) calendar days. If the BIA determines that such objection cannot be resolved, the BIA will:
  - a. Forward all documentation relevant to the dispute, including the BIA's proposed resolution, to the ACHP. The ACHP will provide the BIA with its advice on the resolution of the objection within thirty (30) calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the BIA will prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, Signatories and Invited Signatories received within thirty (30) calendar days of BIA forwarding the documentation relevant to the dispute, and provide them with a copy of this written response. The BIA will then proceed according to its final decision.
  - b. If the ACHP does not provide its advice regarding the dispute within the thirty (30) calendar day time period, the BIA is responsible for making a final decision on the dispute and proceeding accordingly. Prior to reaching such a final decision, the BIA will prepare a written response that takes into account any timely comments regarding the dispute from the Signatories, Invited Signatories, and Concurring Parties, and provide them and the ACHP with a copy of such written response.
2. Any dispute pertaining to the NRHP eligibility of historic properties or cultural resources covered by this Agreement will be addressed by the BIA per 36 CFR § 800.4(c)(2).
3. The appropriate lead federal agencies are responsible for carrying out all other actions subject to the terms of this Agreement that are not the subject of the dispute.

## **Stipulation XV. Effective Date**

This Agreement shall take effect upon its execution and issuance of the ROD for the Project by OSMRE.

## **Stipulation XVI. Duration**

1. This Agreement expires twenty-five (25) years from its effective date unless extended by written agreement of the Signatories and Invited Signatories prior to expiration.
2. One year prior to expiration of this Agreement, the BIA shall consult with the other Signatories and Invited Signatories to reconsider the terms of the Agreement and, if applicable, have the Signatories extend the term of the originally executed Agreement. Extensions are treated as amendments in accordance with Stipulation XVII. Signatories will notify the Invited Signatories and Concurring parties as to the course of action they will pursue.

## **Stipulation XVII. Amendment**

1. Any Signatory or Invited Signatory to this Agreement may propose in writing to the other Signatories and Invited Signatories that it be amended. The Signatories and Invited Signatories will consult for no more than thirty (30) calendar days in an effort to reach agreement on an amendment. Any amendment will be effective on the date it is signed by all of the Signatories.
2. Modifications, additions or deletions to the Historic Properties Treatment Plan(s) shall not require an amendment to this Agreement.

## **Stipulation XVIII. Termination**

1. Only Signatories and Invited Signatories may terminate this Agreement in its entirety. If any Signatory or Invited Signatory to this Agreement determines that its terms will not or cannot be carried out, that party will immediately consult with the other parties to attempt to develop an amendment per Stipulation XVII. If within thirty (30) calendar days an amendment cannot be reached, any Signatory, Invited Signatory or Concurring Party may terminate its participation in the Agreement upon written notification to the other Signatories, Invited Signatories, and Concurring Parties.
2. Termination by the NNTHPO, HCPO, Zia Pueblo, or an individual SHPO shall only terminate the application of this Agreement within the jurisdiction of that party.
3. If the Agreement is terminated in its entirety, the BIA shall either seek to negotiate a memorandum of agreement under 36 CFR § 800.6(c) or request, take into account, and respond to the comments of the ACHP in accordance with 36 CFR § 800.7(a). Following consultation with the ACHP, the BIA will notify the Signatories, Invited Signatories, and Concurring Parties as to the course of action it will pursue.

4. If the Agreement is terminated, each federal agency will be responsible for completion of Section 106 for any undertaking within their jurisdiction.

### **Stipulation XIX. Coordination with Other Federal Reviews**

In the event that APS or PNM applies for federal funding or approvals and the Undertaking remains unchanged, such funding or approving agency may comply with Section 106 of the NHPA by agreeing in writing to the terms of this Agreement and notifying and consulting with the applicable federal or state agency and consulting party. Any necessary amendments will be considered in accordance with Stipulation XVII.

### **Stipulation XX. Scope of the Agreement**

This Agreement is limited in scope to actions that will facilitate the operation and maintenance of the FCPP, ancillary facilities, and Transmission Lines and is entered into solely for the purpose of taking into account the effects of those aspects of the Undertaking on historic properties.

**EXECUTION** of this Agreement by OSMRE, BIA, BLM, EPA, NPS, NNTHPO, HCPO, Zia Pueblo, ACHP, New Mexico SHPO, Arizona SHPO, APS, and PNM and implementation of its terms evidence that OSMRE, BIA, BLM, EPA, and NPS have taken into account the effects of continued operations at the FCPP, associated Transmission Lines, and ancillary facilities on historic properties and afforded the ACHP an opportunity to comment.

## **SIGNATORY PARTY**

### **OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT**

By \_\_\_\_\_ Date \_\_\_\_\_

Regional Director, Western Region

**SIGNATORY PARTY**

**BUREAU OF INDIAN AFFAIRS**

By \_\_\_\_\_ Date \_\_\_\_\_

Sharon A. Pinto, Regional Director, Navajo Region

## **SIGNATORY PARTY**

### **BUREAU OF INDIAN AFFAIRS**

By \_\_\_\_\_ Date \_\_\_\_\_

Bryan Bowker, Regional Director, Western Region

## **SIGNATORY PARTY**

### **BUREAU OF INDIAN AFFAIRS**

By \_\_\_\_\_ Date \_\_\_\_\_

William T. Walker, Regional Director, Southwest Region

## **SIGNATORY PARTY**

### **NAVAJO NATION TRIBAL HISTORIC PRESERVATION OFFICER**

By \_\_\_\_\_ Date \_\_\_\_\_

Ron Maldonado, Acting Tribal Historic Preservation Officer



## **SIGNATORY PARTY**

### **HOPI TRIBE**

By \_\_\_\_\_ Date \_\_\_\_\_

Herman G. Honanie, Chairman

**SIGNATORY PARTY**

**PUEBLO OF ZIA**

By \_\_\_\_\_ Date \_\_\_\_\_

David Pino, Governor

## **SIGNATORY PARTY**

### **BUREAU OF LAND MANAGEMENT**

By \_\_\_\_\_ Date \_\_\_\_\_

Victoria Barr, District Manager, Farmington District

## **SIGNATORY PARTY**

### **BUREAU OF LAND MANAGEMENT**

By \_\_\_\_\_ Date \_\_\_\_\_

Danita Burns, District Manager, Albuquerque District

## **SIGNATORY PARTY**

### **NATIONAL PARK SERVICE**

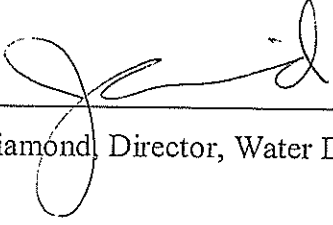
By \_\_\_\_\_ Date \_\_\_\_\_

Superintendent, Petroglyph National Monument

**SIGNATORY PARTY**

**U.S. ENVIRONMENTAL PROTECTION AGENCY**

By

A handwritten signature in black ink, appearing to be 'Jane Diamond', written over a horizontal line.

Date

1/7/2015

Jane Diamond, Director, Water Division, Pacific Southwest Office

## **SIGNATORY PARTY**

### **ARIZONA STATE HISTORIC PRESERVATION OFFICER**

By \_\_\_\_\_ Date \_\_\_\_\_

James W. Garrison, Arizona State Historic Preservation Officer

## **SIGNATORY PARTY**

### **ADVISORY COUNCIL ON HISTORIC PRESERVATION**

By \_\_\_\_\_ Date \_\_\_\_\_

John M. Fowler, Executive Director



## **INVITED SIGNATORY PARTY**

**ARIZONA PUBLIC SERVICE COMPANY**

By \_\_\_\_\_ Date \_\_\_\_\_

Ann Becker, Vice President, Environment and Sustainability

**INVITED SIGNATORY PARTY**

**PUBLIC SERVICE COMPANY OF NEW MEXICO**

By \_\_\_\_\_ Date \_\_\_\_\_

Maureen Gannon, Executive Director, Environmental Services, PNM Resources

**INVITED SIGNATORY PARTY**

**NEW MEXICO STATE LAND OFFICE**

By \_\_\_\_\_ Date \_\_\_\_\_

Ray Powell, M.S., D.V.M., Commissioner of Public Lands